

In The Matter of Merchant Mariner's Document No. Z-890938 and all  
other Seaman Documents  
Issued to: ISIDRO ARIOSIA

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1326

ISIDRO ARIOSIA

This appeal has been in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 2 October 1961, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for three months on nine months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a messman on board the United States SS PIONEER MART under authority of the document above described, on 7 September 1961, Appellant assaulted ordinary seaman Moyne with a piece of pipe.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of seaman Moyne and another eyewitness to the incident as well as an entry in the ship's Official Logbook pertaining to the matter.

Appellant testified in his defense. He stated that, as the result of an argument, Moyne was angry and chased Appellant from the messroom; Appellant picked up a piece of pipe and swung it at Moyne when the younger and larger seaman angrily tried to enter the pantry to knock down Appellant; the pipe slipped out Appellant's hands when he swung it and Moyne went up the stairs to the next deck.

FINDINGS OF FACT

On 7 September 1961, Appellant was serving as a messman on board the United States SS PIONEER MART and acting under authority of his document while the ship was at sea.

At breakfast time on this date, there was an argument between Appellant and ordinary seaman Moyne when Appellant did not serve

the food Moyne had ordered. Obscene language was exchanged and Appellant ran from the messroom when Moyne advanced toward Appellant with raised fists. Appellant circled back to the pantry adjoining the messroom. Moyne started to chase Appellant when he left the messroom. Then Moyne left the messroom by another exit in order to report the lack of service to the Master. As Moyne approached the stairway in the passageway, Appellant came out of the nearby pantry and swung a two-foot long piece of pipe at Moyne and missed him. The pipe slipped from Appellant's hands, bounced on the deck and grazed Moyne's thigh. He continued up the stairs to report to the Master without touching Appellant.

Appellant has no prior record.

#### BASES OF APPEAL

This has been taken from the order imposed by the Examiner. It is contended that the decision is against the weight of the credible evidence; Appellant acted in self-defense; there is no evidence that Appellant struck Moyne; the latter is much larger than Appellant and has a prior bad record.

APPEARANCE on appeal:      Richard L. Baltimore, Jr., Esquire, of  
New York City, of Counsel.

#### OPINION

After considering the conflicting testimony, the Examiner accepted Moyne's testimony that he left the messroom to see the Master rather than Appellant's version that he was being attacked when he swung the pipe. Even Appellant admitted that he had heard Moyne state that he would report Appellant to the Master (R. 54). If Moyne had wanted to give Appellant a beating, it could easily have been accomplished after the pipe had slipped from his fingers; but Moyne continued on his way without bothering Appellant.

The Examiner consistently concluded, on the basis of the testimony of the disinterested eyewitness, that Moyne did not go to the pantry but that Appellant dashed into the passageway and moved toward Moyne with the pipe.

The evident supports the conclusion that Appellant did not act in self-defense since he became the aggressor when he advanced on Moyne.

There is no allegation that Appellant struck Moyne although the latter testified that the pipe touched his thigh when it bounced on the deck. Undoubtedly, the order would have been much

less lenient except for the absence of injury and the consideration of other mitigating circumstances. There is no evidence of Moyne's prior record.

ORDER

The order of the Examiner dated at New York, New York, on 2 October 1961, is AFFIRMED.

E. J. Roland

Admiral, UNITED STATES COAST GUARD  
Commandant

Signed at Washington, D. C., this 7th day of August 1962.